

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS  
SPRINGFIELD DIVISION

MASSACHUSETTS FAIR HOUSING  
CENTER,

HOUSING WORKS, INC.,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT,

MARCIA L. FUDGE, Secretary of the U.S.  
Department of Housing and Urban  
Development,

Defendants.

No. 3:20-cv-11765-MGM

The Hon. Mark G. Mastroianni

**JOINT STATUS REPORT**

Pursuant to this Court's February 12, 2021, Electronic Order, ECF No. 40, the Parties<sup>1</sup> file this joint status report.

1. Plaintiffs challenge Defendants' issuance of a final rule, *HUD's Implementation of the Fair Housing Act's Disparate Impact Standard*, 85 Fed. Reg. 60288 (Sept. 24, 2020) ("2020 Rule"), under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* See Compl., ECF No. 1.

2. On October 25, 2020, prior to the effective date of the 2020 Rule, this Court issued a preliminary injunction of the 2020 Rule and stayed the effective date of the 2020 Rule in its entirety pending final resolution of Plaintiffs' claims. See *Mass. Fair Hous. Ctr. v. U.S. Dep't of Hous. & Urban Dev.*, 496 F. Supp. 3d 600 (D. Mass. 2020). On December 23, 2020, Defendants filed a Notice of Appeal of that decision; however, on February 9, 2021, Defendants filed a motion to voluntarily dismiss their appeal and do not seek to lift the stay. The § 705 stay

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<sup>1</sup> Marcia L. Fudge is substituted pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

remains in effect; the 2020 Rule never went into effect.

3. On January 26, 2021, President Biden issued a Presidential Memorandum which instructed that HUD

shall also, as soon as practicable, take all steps necessary to examine the effects of the September 24, 2020, rule entitled “HUD’s Implementation of the Fair Housing Act’s Disparate Impact Standard” (codified at part 100 of title 24, Code of Federal Regulations), including the effect that amending the February 15, 2013, rule entitled “Implementation of the Fair Housing Act’s Discriminatory Effects Standard” has had on HUD’s statutory duty to ensure compliance with the Fair Housing Act. Based on that examination, the Secretary shall take any necessary steps, as appropriate and consistent with applicable law, to implement the Fair Housing Act’s requirements that HUD administer its programs in a manner that affirmatively furthers fair housing and HUD’s overall duty to administer the Act (42 U.S.C. 3608(a)) including by preventing practices with an unjustified discriminatory effect.

Redressing Our Nation’s and the Federal Government’s History of Discriminatory Housing Practices and Policies, 86 Fed. Reg. 7487 (Jan. 29, 2021).

4. In accordance with the President’s directive, HUD is actively examining the discriminatory effects rule. In light of that examination, on February 11, 2021, Defendants requested that the Court stay this case. *See* Defs.’ Unopposed Mot. to Stay, ECF No. 39. This Court granted Defendants’ motion on February 12, 2021, and required the Parties to file a joint status report after HUD’s review or by June 11, 2021. *See* Electronic Order.

5. On April 12, 2021, HUD sent to the Office of Management and Budget for inter-agency review a draft proposed rule entitled Reinstatement of HUD’s Discriminatory Effects Standard (FR-6251). *See* [www.reginfo.gov/public/do/eoDetails?rrid=162311](https://www.reginfo.gov/public/do/eoDetails?rrid=162311). On May 21, 2021, inter-agency review was completed. *See id.* HUD must submit all rules issued for comment to HUD’s congressional authorizing committees for a 15-day prepublication review pursuant to 42 U.S.C. § 3535(o). On June 1, 2021, HUD submitted the Reinstatement of HUD’s Discriminatory Effects Standard proposed rule to those committees.

6. Accordingly, the Parties propose to continue the stay of this case. The Parties propose to file another joint status report apprising the Court of the status of the rulemaking

process by August 10, 2021.

Dated: June 11, 2021

Respectfully submitted,

/s/ Lauren Sampson

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### **CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b)(2)(E), Defendants effected service of this filing on all other parties to these actions by filing it with the Court's electronic filing system.

s/ James D. Todd Jr.  
JAMES D. TODD, JR.